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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223663
Party	Defendant Vincent Giovannetti
Correspondence Address	ANTHONY M VERNA III VERNA LAW PC 445 HAMILTON AVE, SUITE 1102 WHITE PLAINS, NY 10601 UNITED STATES anthony@vernalaw.com
Submission	Other Motions/Papers
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Date	12/09/2015
Attachments	motion to set aside notice of default - Giovanetti.pdf(368928 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Salt Life, LLC	)	Opposition No.: 91223663
	)	
Plaintiff,	)	
vs.	)	
	)	
Giovannetti, Vincent	)	
	)	
Defendant	)	
	)	
	)	
	)	

MOTION TO SET ASIDE A NOTICE OF DEFAULT

Vincent Giovannetti ("Defendant" or "Applicant"), through his attorney, Anthony M. Verna III, hereby files this motion to set aside the notice of default, as defined by TBMP §312.02.

The standard for determining whether default judgment should be entered against a defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, i.e., whether the defendant has shown good cause why default judgment should not be entered against it.

As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board is mindful of the fact that Board policy is to decide cases on their merits. Accordingly, the Board only reluctantly enters default judgments for failure to timely answer,

and tends to resolve any doubt on the matter in favor of defendants. See TBMP §312.02 (2d ed. rev. 2004). In fact, the one case that even the TMBP cites, *DeLorme Publishing Co v. Eartha's Inc*., 60 USPQ2d 1222 (TTAB 2000) (willful conduct shown where although applicant may not have intended that proceedings be resolved by default, applicant admittedly intended not to answer for six months); shows a time of six months late in filing its answer. Here, the Applicant's delay is more akin to *Fred Hayman* at 1557 in which the failure to answer due to inadvertence on part of applicant's counsel; answer had been prepared and reviewed by applicant but counsel inadvertently failed to file it; nine-day delay would cause minimal prejudice; by submission of answer which was not frivolous meritorious defense was shown.

In this case, the eleven-day delay after counsel failed to file Applicant's answer also causes minimal prejudice.

There is no evidence that petitioner was at all prejudiced by respondent's delay. That is, the record does not indicate that, as a result of Applicant's delay, Opposer's ability to prosecute the case is adversely affected through, for example, lost evidence or unavailable witnesses. See *Pratt v. Philbrook*, 109 F.3d 18 (1st Cir. 1997); TBMP §509.01(b)(1) (2d ed. rev. 2004). In this particular case, there is no lost evidence at all.

In addition, applicant has indicated that he intends to defend the notice of opposition on the merits. An Answer was filed on November 9, 2015. That Answer admits, denies, or states that there is not enough information to admit or deny the various averments of the Notice of Opposition – amended on October 8, 2015.

Based on the foregoing, the notice of default should be set aside.

Respectfully submitted,

Dated: December 8, 2015

/s Anthony M. Verna III
Anthony M. Verna III, Esq.
Verna Law, P.C.
445 Hamilton Ave., Ste. 1102
White Plains, NY 10601

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Salt Life, LLC	)	Opposition No.: 91223663
	)	
Plaintiff,	)	
vs.	)	
	)	
Giovannetti, Vincent	)	
	)	
Defendant	)	
	)	
	)	
	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of December 2015, a copy of the foregoing Answer was served via First Class Mail, postage prepaid, on the following:

J. Parks Workman
Dority & Manning, P.A.
P.O. Box 1449
Greenville, SC 29602-1449

Respectfully submitted,

Dated this December 8, 2015

/s Anthony M. Verna III
Anthony M. Verna III, Esq.
Verna Law, P.C.
445 Hamilton Ave., Ste. 1102
White Plains, NY 10601